STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission On Its Own Motion Requirements governing the form and content of contract summaries for the neutral fact-finder process for 2000 under Section 16-112(c) of the Public Utilities Act	Docket No. 00-0007

INITIAL BRIEF OF ILLINOIS POWER COMPANY

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Pursuant to § 200.800 of the Commission's Rules of Practice and the schedule set forth by the Hearing Examiner in the above-referenced docket, Illinois Power Company ("IP" or "Illinois Power") hereby submits its initial brief. IP would like to commend the Staff of the Commission for its efforts in crafting this year's instructions for reporting contract summaries to the Neutral Fact-Finder ("NFF") under Section 16-112(c) of the Public Utilities Act ("PUA"). 220 ILCS § 5/16-1 12(c). In general, Illinois Power does not object to the instructions submitted by Staff, as amended in rebuttal testimony. Illinois Power does have one concern with the use of certain contracts, as well as additional concerns with some of the proposals made by other parties in this case.

I. The Commission Should Instruct the NFF to Eliminate from Consideration Certain Contracts Because Those Contracts Perpetuate the Prior Year's NFF Value.

In his direct testimony, David W. Hastings presented a very straight-forward demonstration of a problem inherent in some contracts that will be submitted to the NFF. See IP Ex. 1.1. Some contracts that are required to be reported under § 16-112 are priced on a bundled basis. In performing the unbundling of this price, Mr. Hastings demonstrated that using the prior year's NFF values to calculate the applicable transition charge ("TC"), which is then used to calculate an unbundled price, creates a result which will always end up at or near the prior year's NFF value for the unbundled power and energy price. See IP Ex. 1.1 at 3 & IP Ex. 1.2.[1] Although they suggested differing solutions, other parties acknowledged that Mr. Hastings was correct in demonstrating this circularity. See, e.g., Ameren Ex. 2.0 at 4; Nicor Energy LLC Ex. 2 at 4; ICC Staff Ex. 2.0 at 3.

Given the clear circularity inherent in the unbundling of contracts using the prior year's NFF values, the question becomes is there a way to salvage at least some of the available data. Mr. Hastings provides an easy and verifiable way to do so: the actual market forwards that were used to value the contract during negotiations. IP Ex. 1.1 at 4.[2] Market forwards represent a contract-specific estimate of the market price. Staff Cross Ex. l-Hastings. And, they are verifiable since the data is historic, can be linked to a specific contract and can be audited in accord with the procedures already in place for handling highly confidential data. See *id.* Using this data breaks the circularity issue. IP Ex. 1.1 at 4. See *also* Ameren Ex. 2.0 at 4; Nicor Energy LLC Ex. 2 at 4.

Furthermore, this data represents at least one contracting party's view of the market value for the year in question. The same cannot be said of the prior year's NFF values or of any other solution offered by a party to this proceeding. For example, the ICC Staff finds it preferable to use

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[1] Mr. Stephens criticized Mr. Hastings' demonstration, claiming that the numbers used in the hypothetical were the only ones that would make the calculation exactly equal to the prior year's NFF value. IIEC Ex. 1 at 6. This criticism is unwarranted. First, Mr. Hastings stated in his direct testimony that "slight differences might occur due to slight differences in the starting contract price." IP Ex. 1.1 at 3. Second, and as if to confirm exactly what Mr. Hastings said while at the same time criticizing it, Mr. Stephens goes on to provide illustrations of this very point: when the contract price is slightly higher, the residual market value is that much higher than the prior year's NFF value; and the same correlation is true for lower values. IIEC Ex. 1 at 6. In providing these additional calculations, Mr. Stephens has lost sight of the point. In all cases, the derived market value essentially perpetuates the prior year's NFF value (plus or minus a small amount) and in no way represents a fresh determination of market value.

[2] For those contracts where no assumption of market value was used, the contracts should be eliminated from consideration by the NFF since there is no way to break the circularity. IP Ex. 1.1 at 4.

the old NFF values, ICC Staff Ex. 2.0 at 3, even though this leads to perpetuating the stale prior NFF values, Nicor Energy Services LLC suggests using day-ahead values, Nicor Energy LLC Ex. 1 at 5, even though there is no basis to believe such values were used by any contracting party to value the power and energy to be provided under that contract. See IP Ex. 1.3 at 5.

Based on the above, the Commission should direct the NFF to eliminate from consideration any bundled contract for which no assumption of market price was made. Where a market price assumption was made and can be documented, those values should be presented along with the usage that was used in negotiations with the customer. See IP Ex. 1.1 at 4.

II. **The Commission Should Reject NewEnergy's Proposals.**

NewEnergy Midwest, L.L.C. ("NewEnergy") made four proposals. See NewEnergy Midwest, L.L.C. Ex. 1 at 14-15. None of these should be adopted.

First, NewEnergy proposes the NFF calculate "more precisely" values that reflect seasonal and time of day price distinctions. Illinois Power agrees that as a theoretical matter, the NFF should strive for market values that most closely reflect the actual price distinctions that exist both seasonally and on-peak versus off-peak. However, NewEnergy does not provide any objective means for doing this.

Second, NewEnergy proposes that the NFF perform a load shaping and load following calculation. NewEnergy's proposed methodology is inappropriate. In seeking a "peaking adjustment (NewEnergy Midwest, L.L.C. Ex. 1 at 5), NewEnergy is actually seeking to have the NFF perform a calculation that is already performed outside of the NFF process under the utilities' translation tariffs. See IP Ex. 1.3 at 2; ComEd Ex. 3 at 7-9. Specifically, the adjustment NewEnergy seeks here is performed by calculations contained in Appendix 5 of IP's Rider TC. IP Ex. 1.3 at 2. There is thus no need to have the NFF waste valuable time and resources gathering the data to perform a calculation that has been handled elsewhere. Furthermore, there is no legal basis to make this adjustment in the NFF process: subsection 16-l 12(k) requires that the utilities perform this translation calculation, not the NFF. For these reasons, NewEnergy's second recommendation must be rejected.

Third, NewEnergy proposes that the Commission direct the NFF to report separate wholesale and retail values, Mr. Crumrine of Commonwealth Edison demonstrated why this was inappropriate as a matter of business. ComEd Ex. 3 at 3-6. Furthermore, there is no statutory basis for this proposal. While the inputs used by the NFF include wholesale and retail contracts, see § 16-l 12(c), the statue no where authorizes the NFF to create separate retail and wholesale market values.

Fourth, NewEnergy proposes that reporting entities explain if the contract undervalues the 2001 charges due to the way other contract years' charges are set. NewEnergy's proposal is inappropriate because it assumes that only undervalued years should be explained. As Mr. Hastings explained, the mismatch for any given year can occur in either direction and in many ways may be unknowable based on who bears the risk of price fluctuations. IP Ex. 1.3 at 4. There is thus no reason to explain only when 2001 charges arc undervalued.

Nonetheless, as a general matter, Illinois Power agrees that reporting entities should be allowed to provide explanatory matter that will assist the NFF in reaching a better result. In its rebuttal testimony (ICC Staff Ex. 3.0), Mr. Bishop presented generic language that would permit reporting parties the opportunity to assist the NFF in understanding the contract summaries. Illinois Power supports this language. The NFF will likely be confronted with an array of different contracts and contractual provisions. If the reporting entity can help the NFF understand these contracts and in the process assist the NFF in reaching a better result, the reporting process should encourage this. Thus, if explanatory information is permitted (and Illinois Power believes that it should be), then any relevant information should be accepted.

In sum, NewEnergy's proposals should be rejected as unwarranted and/or inconsistent with the law.

WHEREFORE, Illinois Power Company requests that the Commission:

(1) direct the NFF to eliminate from consideration any bundled contract for which no assumption of market price was made. Where a market price assumption, was made and can be documented, those values should be presented along with the usage that was used in negotiations with the customer;

(2) reject NewEnergy's proposals as unwarranted and/or inconsistent with the law; and

(3) adopt the provisions contained in the Exhibit to Staffs Rebuttal Testimony that would allow reporting entities to provide additional relevant, explanatory information.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Joseph L. Lakshmanan, certify that on the 16th day of March, 2000, I served a copy of Illinois Power's Initial Brief by electronic mail and overnight delivery, from Decatur, Illinois, fees prepaid to the individuals on the service list attached.

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